

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Norfolk Division)**

JANE PHILLIPS,)	
)	
Plaintiff,)	
)	
v.)	Case No.: <u>2:24-cv-60</u>
)	(Removed from the Circuit Court
TD BANK, NATIONAL ASSOCIATION, <u>et al.</u> ,)	for Isle of Wight County;
)	Case No.: CL23-1242)
Defendants.)	
_____)	

NOTICE OF REMOVAL

Defendant, TD Bank USA, N.A. (incorrectly identified in the Complaint as “TD Bank, National Association”)¹ hereby removes the above-captioned civil action, and all claims and causes of action therein from the Circuit Court for Isle of Wight County, Virginia to the United States District Court for the Eastern District of Virginia (Norfolk Division). In support thereof, TD Bank states as follows.

1. Plaintiff filed a Complaint (“Complaint”) styled *Jane Phillips v. TD Bank, National Association*, bearing Case No. CL23001242-00, in the Circuit Court of Isle of Wight County.
2. Pursuant to 28 U.S.C. § 1446(a), copies of the Complaint and Summons are attached hereto as Exhibit “A.”
3. TD Bank was served with a copy of the Complaint on or about December 19, 2023.
4. This Notice of Removal is proper as it is being filed within thirty (30) days of service of the Summons and Complaint on TD Bank.

¹ TD Bank USA, N.A. was improperly named herein as TD Bank, National Association. TD Bank USA, N.A. is the entity that issued Plaintiff’s credit card account.

5. 28 U.S.C. § 1441(a) provides, in pertinent part, as follows:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending[.]

Id.

6. Venue for removal is proper in this district and division under 28 U.S.C. § 1441(a) because this district and division embrace the Circuit Court for Isle of Wight County, the forum in which the remove state court action was pending.

**This Court Has Original Subject Matter Jurisdiction Pursuant To 28 U.S.C. §§ 1331
And, Therefore, Removal Is Proper**

7. This Court has original jurisdiction over Plaintiff's claims under 28 U.S.C. § 1331 because Plaintiff alleges that TD Bank violated the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* ("FCRA") by failing to conduct a reasonable investigation into Plaintiff's disputes to the credit reporting agencies regarding her TD Bank account (the "Account") and continuing to report inaccurate information regarding the Account on her credit reports.

8. Plaintiff's FCRA claim arises under federal law, and, therefore, this action may be removed pursuant to 28 U.S.C. § 1441(a) as this Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331.

9. Additionally, the Court has supplemental jurisdiction over Plaintiff's state law claims, if any, pursuant to 28 U.S.C. § 1367.

10. This Notice of Removal is timely filed within thirty (30) days after TD Bank was served with a copy of the initial pleadings setting forth the claims for relief and existence of federal

question jurisdiction. See 28 U.S.C. § 1446(b); see also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 348-49 (1999); and Fed. R. Civ. P. 6(a).²

11. The Court of Appeals for the Fourth Circuit has “long recognized an exception to the rule of unanimity, which states that a nominal party need not consent to removal.” Harford Fire Ins. Co. v. Harleysville Mut. Ins. Co., 736 F.3d 255, 257 (4th Cir. 2013). In turn, a nominal party is one that has “no immediately apparent stake in the litigation either prior or subsequent to the act of removal.” Id., 736 F.3d at 260.

12. TransUnion LLC (“TransUnion”) settled this case with Plaintiff on January 12, 2024. See Case No. CL23001242, Pleadings/Orders Detail entry dated January 12, 2024, attached hereto as Exhibit “B.” Accordingly, TransUnion’s consent for removal is not required, because it is a nominal party that no longer has any stake in the litigation as a consequence of its settlement of the Plaintiff’s claims asserted against it.

13. Pursuant to 28 U.S.C. § 1446(d), a copy of the filing of this Notice of Removal will be promptly filed with the clerk for the Circuit Court for Isle of Wight County, and served upon Plaintiff. A copy of the Notice of Filing of Notice of Removal (without exhibits) is attached as Exhibit “C.”

14. In filing this Notice of Removal, TD Bank does not waive, but instead specifically reserves all defenses, objections, motions, or exceptions available to it under applicable law. In particular, TD Bank expressly reserves the right to move for dismissal or judgment pursuant to

² Pursuant to Fed. R. Civ. P. 6(a), excluding the day of the event that triggers the 30-day removal period, *i.e.*, December 19, 2023, the date of service on TD Bank, counting every day (including Saturdays, Sundays, and legal holidays), and including the last day of the period, the deadline to remove is January 19, 2024.

Fed. R. Civ. P. 12. and 56. No statement herein or omission should be deemed to constitute an admission by TD Bank of any allegation set forth in the Complaint or damages sought therein.

15. For the foregoing reasons, Defendant, TD Bank USA, N.A. removes the above-captioned action now pending before the Circuit Court of Isle of Wight County to the United States District Court for the Eastern District of Virginia (Norfolk Division).

Respectfully submitted,

/s/ John A. Nader

John A. Nader (VSB No. 73259)

HINSHAW & CULBERTSON, LLP

700 12th Street, N.W., Suite 700

Washington, D.C. 20005

Tel.: (202) 970-5280

Fax: (212) 935-1166

jnader@hinshawlaw.com

Counsel for Defendant,

*TD Bank USA, N.A. (incorrectly identified in the
Complaint as “TD Bank, National Association”)*

CERTIFICATE OF SERVICE

I certify that on January 19, 2024, I filed the foregoing Notice of Removal with the Clerk of the Court using the CM/ECF system, which then served a Notice of Electronic Filing on:

Andrew Shuniak, Esq.
Law Offices of Robert S. Gitmeid & Assoc., PLLC
414 N. 25th Street, PO BOX #7938
Richmond, Virginia 23223
Tel: (571) 201-9021
jandrew.s@gitmeidlaw.com

Counsel for Plaintiff

/s/ John A. Nader
John A. Nader